

Article 14 | Nonconformities

Sec. 14.1 General

14.1.1 Purpose

Zoning regulations established by the adoption of this Ordinance or amendments to this Ordinance may cause properties and uses which were lawful prior to the adoption of certain regulation to not meet requirements after adoption of the regulations. The purpose of this section is to establish procedures and regulations for the use of those properties or structures which are in conflict with the requirements of this Ordinance. It is not the intent of this section to encourage the continuance of nonconformities that are out of character with the standards of the zoning district. It is the intent of this section, however, to allow certain nonconforming situations to continue as legal exceptions to this Ordinance.

14.1.2 Nonconformities Defined

A nonconformity shall be any use, lot, improvement, or structure that, as a result of amendments to this Ordinance or a preexisting condition, does not meet the current standards of the Ordinance.

A. Nonconforming Use

A nonconforming use shall be any land use or type of residential use that was legally established but has become a prohibited use in the district in which it exists.

B. Nonconforming Lot

A nonconforming lot shall be any legally established parcel that does not conform to the current area or dimensional requirements of the zoning district in which it is located, except that any legally established lot of record not located within a Special Flood Hazard Area that has a minimum width of 35 feet created prior to the effective date of this Ordinance that is located on a street that is accepted and maintained by NCDOT or the City (or such other form of access as is permitted pursuant to paragraph 12.2.2, Other Forms of Access) may be developed with a single family residence subject to Sec. 8.7, Watershed Protection Overlay Standards, and the availability of water and wastewater treatment systems, so long as such use is a permitted use in the district in which the property is located.

C. Nonconforming Improvement or Structure

A nonconforming improvement or structure shall be any legally established improvement, building or structure that fails to meet current Ordinance standards for setback, height, or similar factors.

14.1.3 Continuation of Nonconformities

Legal nonconformities may continue subject to the limitations of this Article. Continuation, reconstruction, alteration, and/or expansion of such nonconformities shall be subject to the provisions of this Article.

14.1.4 Maintenance and Repair

Nothing in this section shall prohibit the ordinary maintenance and repair of a nonconformity, including but not limited to repairs required by the Durham Housing Code, except that nonconforming structures that have suffered repetitive loss due to flooding shall not be permitted to be repaired. Maintenance and repair shall be subject to issuance of building permits, as is required by the Building Code.

14.1.5 Completion of Buildings and Improvements

A. Nonconformities Resulting from Adoption of this Ordinance.

Completion of buildings that become nonconforming as a result of passage of this Ordinance shall be allowed if an application for a building permit sufficient to allow approval was submitted prior to passage of this Ordinance, and if the building is subsequently completed in accordance with an approved building permit within 2 years of initial issuance of the permit. In addition, completion of buildings for which building permits were not applied for may be allowed under the Transitional provisions of this Ordinance. Completion of improvements other than buildings that become nonconforming as a result of passage of this Ordinance shall be governed by the Transitional provisions of this Ordinance.

B. Subsequent Nonconformities.

Completion of buildings that are created by amendments to this Ordinance shall be allowed if a building permit was issued prior to the amendment, if the permit remains continuously valid, and if the building is completed within 2 years of initial issuance of the permit. Completion of buildings or improvements for which permits were not issued, but that are subject to site plans or preliminary plats that were approved prior to the Ordinance amendment shall be governed by the provisions regarding continuous validity of site plans and preliminary plats found elsewhere in this Ordinance.

Sec. 14.2 Nonconforming Uses

A nonconforming use may be continued (though for some uses the period of time within which the use may be continued may be limited). If a nonconforming use or activity is governed elsewhere in this Ordinance, such as in Sec. 5.3, Limited Use Standards, the stricter of those provisions or the provisions below shall apply where there is a conflict in provisions. Otherwise, all applicable restrictions shall apply. The provisions below shall not be interpreted to change any amortization period or buffering requirement applicable elsewhere in this Ordinance to specifically identified nonconforming uses.

14.2.1 Limitations on Nonconforming Uses

Except as specified in paragraph 14.2.2, Changes to Nonconforming Uses (City Only), nonconforming uses shall be subject to the following restrictions, in addition to restrictions that may be imposed by other provisions of this ordinance or by conditions within a special use permit or other approved plan or permit:

- A. Floor area shall not be enlarged, except for the exceptions specified in paragraph 14.4.1B;
- B. Residential density shall not be increased;
- C. Lot coverage shall not be increased;
- D. The nonconforming use shall not expand in degree, frequency, intensity, or impact of the activity;
- E. The nonconforming use shall not be relocated to another portion of a lot, except as allowed in the City pursuant to provisions authorizing the issuance of special use permits for certain nonconforming uses, described below; and,
- F. The nonconforming use shall not be changed to a different nonconforming use, except as allowed in the City pursuant to provisions authorizing the issuance of special use permits for certain nonconforming uses, described below.

14.2.2 Changes to Nonconforming Uses (City Only)

- A. A single-family residential nonconforming use can be expanded one time during its existence through enlargement of the floor area of the building associated with the nonconforming use by a maximum of 10% or 500 square feet, whichever is greater, and an associated increase in lot coverage, provided that such expansion complies with all development standards of the established zoning district in which the nonconforming use is located at the time of expansion.
- B. Nonconforming uses located on a major or minor thoroughfare may be changed to a different nonconforming use, or range of uses, or relocated on the same site, upon issuance of a minor special use permit pursuant to Sec. 3.9, Special Use Permit. The Board of Adjustment may limit the time period for which such a use permit is valid, if it determines such limitation is necessary or in the public interest. In order to issue such a permit, in addition to consideration of all criteria generally applicable to special uses, the Board of Adjustment shall find that:
 - 1. The proposed new nonconforming use, if a new nonconforming use is proposed, is more compatible with the development pattern of the surrounding area than the previous nonconforming use; and

2. Mitigation measures included as specific conditions in the permit, if necessary, are adequate to provide protection for nearby properties; and,
3. The proposed use, range of uses, or relocation of uses reduces the impacts on the surrounding area in comparison with the established nonconformity. In making this determination, the Board of Adjustment may consider factors such as:
 - a. Whether the proposed new nonconforming use is considered less intense than the previous nonconforming use considering the uses permitted in each zoning district and the hierarchy of zoning districts established in paragraph 4.1.1, Establishment of Districts, with the districts listed in order from least intense to most intense;
 - b. Whether the proposed new nonconforming use can be expected to generate less traffic, particularly peak hour traffic, than the previous nonconforming use; and,
 - c. Whether the proposed new use can be expected to result in a decrease in parking demand from the previous nonconforming use.

14.2.3 Abandonment

A nonconforming use can be changed at any time to a use that conforms to a use allowed by the zoning district. A nonconforming use shall not be re-established if it is:

- A. Converted to a conforming use;
- B. A use that utilizes a structure and is abandoned for a period of at least six consecutive months, as evidenced by termination of utilities, declaration of inhabitability, or other action that the Planning Director or designee deems an indication of abandonment;
- C. A use that is conducted outside of a structure and is abandoned for a period of at least 30 days as evidenced by removal of equipment or other action that the Planning Director or designee deems an indication of abandonment; or,
- D. In the City, changed to a different non-conforming use through the issuance of a minor special use permit.

14.2.4 Damage/Destruction

A nonconforming use other than a single-family use that is contained in a structure that is damaged or partially destroyed can only be reestablished if the damage is less than 50% of the appraised tax value, a completed building permit is issued within 12 months of damage or partial destruction, and construction is completed within 12 months of issuance of the permit. A single-family nonconforming use can be reestablished in any event. No new structure may be constructed to be used as an accessory structure to a nonconforming use.

14.2.5 Home Occupations

Nonconforming home occupations for which receipt of a home occupation permit prior to adoption of this Ordinance that can be documented can continue only for as long as the holder of the original permit resides on the property and operates the use.

Sec. 14.3 Nonconforming Lots

14.3.1 General Standards

- A.** The creation of a lot with a width or area smaller than allowed by existing zoning requirements is prohibited, except by governmental action, such as a road widening or an officially adopted housing program.
- B.** Notwithstanding this prohibition, the creation of a lot that does not meet Ordinance requirements is allowed where such lot is comprised of one or more legal nonconforming lots that are being enlarged to create a lot that more closely meets Ordinance standards, or for the purposes of setting land aside as permanent open space with no development rights, provided that the resulting lots satisfy the dimensional requirements of paragraph 7.2.4, Open Space Calculation, or paragraph 7.2.5, Useable Open Space Design.
- C.** Where governmental action has reduced the size of a lot, construction, reconstruction, and additions to structures on the lot shall be considered under the standards for nonconforming lots set forth in this subsection.

14.3.2 Single-Family Residential Lots

- A.** Lots that do not meet the requirements of paragraph 14.1.2B, Nonconforming Lot, may be developed following approval by the Board of Adjustment as a minor special use in accordance with Sec. 3.9, Special Use Permit, and the Board of Adjustment's making one of the additional following findings:
 - 1.** The general area around the subject lot is developed and the size of the lot to be developed is reasonably consistent with the general pattern of surrounding development; or
 - 2.** The general area around the subject lot is developed and the building to be constructed will not substantially impact surrounding development in a negative manner; or
 - 3.** It would be unreasonable or cause undue economic hardship to not allow development of the subject lot. Factors to be considered include, but are not limited to:
 - a.** Ownership history;
 - b.** Prior development approvals regarding the subject lot or surrounding lots;
 - c.** Economic investments; and
 - d.** The purposes to be served by requiring compliance with lot size requirements.
- B.** Side yard requirements for single-family residential development on nonconforming lots that do not meet lot width requirements shall be reduced as follows:
 - 1.** In the Suburban, Urban, Compact and Downtown Tiers, each side yard shall be at least 80% of the required side yard for the district in which the lot is located.
 - 2.** In the Rural Tier, the sum of the width of the two side yards of a nonconforming lot of record shall be at least 25% of the lot width. The minimum single side yard of a nonconforming lot of record shall be 12% of the lot width. In addition to these requirements, the following minimums apply: if the nonconforming lot of record exceeds

a width of 55 feet, then each side yard shall be a minimum of 8 feet wide. If the nonconforming lot of record is 55 feet wide or less, each side yard shall be a minimum of 6 feet wide.

14.3.3 Lots Other Than Single-Family Lots

Where otherwise allowed by this Ordinance, a structure other than a single-family structure may be constructed on a legal nonconforming lot only upon the issuance of a minor special use permit by the Board of Adjustment in accordance with Sec. 3.9, Special Use Permit.

14.3.4 Lots within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas

Nonconforming lots within Special Flood Hazard Areas or Future Conditions Flood Hazard Areas shall only be developed pursuant to paragraph 8.4.4, Development in Special Flood Hazard Areas and Future Conditions Flood Hazard Areas, in addition to the requirements of this section.

Sec. 14.4 Nonconforming Improvements and Structures

This section shall govern expansion and improvements to nonconforming buildings; expansion and improvements to improvements that are not buildings; and building, improvements, and reconstruction on development projects governed by site plans or plats that are completed but which do not meet the requirements of this Ordinance.

14.4.1 Nonconforming Buildings or Structures

- A. Reconstruction of buildings, including single family homes, that are located in Special Flood Hazard Areas or Future Conditions Flood Hazard Areas, shall not be permitted if the structure has experienced substantial damage or repetitive loss. Any construction or development in such areas shall be subject to paragraph 8.4.4, Development in Special Flood Hazard Areas and Future Conditions Flood Hazard Areas, in addition to the requirements of this section.
- B. Additions to, or reconstruction of, nonconforming buildings and structures not located within Special Flood Hazard Areas or Future Conditions Flood Hazard Areas shall require approval of a minor special use permit pursuant to Sec. 3.9, Special Use Permit, unless exempted pursuant to paragraph 3, below.
 - 1. No enlargement or reconstruction shall have the effect of increasing the degree or extent of a nonconforming feature.
 - a. Additions that are proposed between the minimum yard requirement and the existing building line, or are consistent with the existing height, shall not be considered to increase the degree or extent of the nonconformity.
 - b. An addition shall be considered to increase the nonconformity if it extends further into required yards than the existing encroachment.
 - 2. No enlargement or reconstruction shall create new nonconformities or encroachments, unless a variance is approved pursuant to Sec. 3.14, Variance.
 - 3. The following additions and reconstruction, not located within Special Flood Hazard Areas or Future Conditions Flood Hazard Areas, are exempt from a minor special use permit requirement:
 - a. Improvements that allow existing buildings to meet local health, sanitary, or safety code requirements or that are necessary to ensure safe living or occupancy conditions;
 - b. Improvements that require a certificate of appropriateness pursuant to Sec. 3.17, Certificate of Appropriateness;
 - c. Additions of any size that:
 - (1) Comply with all current ordinance requirements, and proposed height is consistent with or less than the existing height of the structure; or
 - (2) Brings the entire structure into closer conformance with current ordinance requirements.

- d. Additions, with a maximum increase in square footage of 10%, that are proposed between the minimum yard requirement and the existing building encroachment line;
- e. Reconstruction of the nonconforming structure that is within the original building footprint and is consistent with the height of the original structure. Proposed additional square footage shall meet the parameters of paragraphs c or d above, as applicable, to be exempt from the requirement of a minor special use permit.
- f. Reconstruction, enlargement of, or improvements to a nonconforming structure that is part of a housing program initiated by or supervised by the City, County, or an entity created by the City, County, or State of North Carolina, as long as the degree or extent of the nonconforming feature is not increased.

C. Time-Period Limitations for Reconstruction of Nonconforming Structures

- 1. Single-family or duplex structures, and associated accessory structures, can be re-built within the original building footprints as long as a certificate of compliance for the new structure is issued within 36 months of the date of demolition or destruction of the original structure. Otherwise, current ordinance requirements shall be met. The Planning Director can issue an extension for up to 12 months, as long as documentation is provided that demonstrates due diligence has been made to re-build the structure.
- 2. Multifamily and non-residential structures can be re-built within the original footprints as long as a certificate of compliance for the new building is issued within 36 months of the date of destruction or demolition. Otherwise, current ordinance requirements shall be met.

14.4.2 Improvements to Nonconforming Land Improvements that are not Structures

Additions or changes to nonconforming land improvements such as parking lots, ponds, or other constructed features on land shall not be made unless the addition or improvement brings the land improvement or the development of which it is a part into greater conformity with this Ordinance. Where an improvement of this type is being made in association with enlargement of a nonconforming building, the application shall be considered under paragraph 14.4.1, Nonconforming Buildings or Structures, above.

14.4.3 Construction on, Redevelopment of, and other Improvements to Nonconforming Development Projects

Development projects, such as those approved in accordance with a site plan or preliminary plat, may no longer conform to Ordinance requirements in all areas, such as impervious area, stormwater improvements, flood elevations, location of constructed areas, vegetated areas, or buffers. Such projects shall be considered nonconforming projects. Additions to, enlargement of, redevelopment of, or other construction on such projects shall be subject to the following provisions:

- A. If the construction affects discrete portions of the development project those portions can be considered without regard to compliance of the entire project with the Ordinance. In such case, current Ordinance requirements shall be applied to the improvements for which approval is requested to the maximum degree reasonable in light of the fact that the development project as a whole does not comply with current requirements; and

- B. Redevelopment of a development project, defined as construction that exceeds 50% of the appraised tax value of the project, shall be subject to all current Ordinance requirements.

14.4.4 Variance

Enlargement, reconstruction, or improvements to nonconformities that do not meet the provisions listed above may seek a variance from current Ordinance requirements under the Variance provisions of this Ordinance.

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